

***National Labor Relations Board***  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** March 24, 1998

**TO:** James J. McDermott, Regional Director, Region 31

**FROM:** Barry J. Kearney, Associate General Counsel, Division of Advice

**SUBJECT:** Teamsters, Local 166 (Shank Balfour/Beatty), Case 31-CE-212

584-5056

This Section 8(e) case was submitted for advice on whether the transportation of construction materials between two jobsites four miles apart constitutes on-site work within the meaning of the Section 8(e) construction industry proviso.

We conclude, in agreement with the Region, that this delivery work falls outside the 8(e) proviso.

The Board explained the purpose and scope of the 8(e) proviso in Joint Council of Teamsters, No. 42 (California Dump Truck Owners Ass'n).<sup>1</sup> In Joint Council, the bargaining agreement defined on-site work as the hauling of materials up to 10 miles away, and also required the signatory employer to terminate the employment of owner-operators who failed to become union members. The union contended, based on the contract, that owner-operator dump truck drivers who hauled dirt and other material from the employer's construction site to a variety of other employer-controlled construction projects up to 10 miles away must join the union. The dump truck drivers ordinarily remained in their vehicles and did not converse with any employees on the site. Assuming a 10-mile round-trip, the Board calculated that a dump truck driver would spend approximately 10 minutes loading and off-loading, and 50 minutes traveling off-site. The Board held that the 8(e) proviso did not apply to the dump truck drivers, even though "the transportation activity [took] place between and involve[d] brief work on two sites controlled by the same construction contractor."<sup>2</sup> It noted that "[t]he primary purpose of the construction industry proviso - to avoid tensions among groups of employees at the same site - has little relevance to persons having such incidental contact with the site." Id. at 816.

In reaching this conclusion, the Board expressly relied on several earlier decisions which focused on the purpose of the work performed and its relationship to the jobsite. For example, the Board cited Teamsters, Local 631 (Reynolds Elec. and Eng'g Co.).<sup>3</sup> which held that drivers who exclusively delivered drilling equipment to a construction site did not perform on-site construction work within the meaning of 8(e) where they performed no construction work and possessed no skills to perform such work. Instead, the Board concluded that their limited "onsite tasks were but an inseparable extension of the total delivery process."<sup>4</sup>

In reaching this conclusion in Joint Council, the Board expressly did not decide whether inter-site delivery work may include some off-site work in different circumstances:

We leave open the question whether, if ever, the definition of job-site work under the proviso may include the brief and incidental transportation of materials between two proximate, but not physically contiguous geographical, sites of construction, each of which is exclusively controlled by the same contractor. Id. at 817 n.33.

By contrast, the 8(e) proviso will apply where the driver's work consists of more than the transportation of materials and supplies. In Cahill Trucking Co.,<sup>5</sup> for example, drivers who delivered pipe bedding material to the jobsite and hauled away waste materials also performed backfilling on the construction site, as well as "whatever else [the contractor] needed [them] for." The ALJ concluded that the on-site construction activities were not de minimis, as the drivers sometimes spent entire days performing such work. Consequently, the construction industry proviso of Section 8(e) was applicable.<sup>6</sup>

We assume, arguendo, that the Robertson's Ready Mix storage site for cement segments is a construction site within the 8(e)

proviso. The disputed work here is comparable to that performed in Joint Council. The owner-operator truck drivers' exclusive task was to transport cement segments from the Robertson's Ready Mix site four miles distant to the Employer's jobsite. Since the drivers' only activity on either jobsite was to await the loading and unloading of the cement segments, during which time they ordinarily did not even leave their trucks, there can be no argument that their on-site duties were more than de minimis, as in Cahill Trucking and Stief Co. It appears that the drivers had only the merest incidental contact with the jobsites and the construction work being performed there. As in Reynolds Elec., the only contact that the drivers had with the jobsites was during loading and unloading, which was but the beginning and end of the transportation process.<sup>7</sup> Moreover, the two sites are not in close proximity, nor "exclusively controlled by the same contractor." Thus, this case does not present the issue left open in Joint Council, *supra*, at note 3.

B.J.K.

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<sup>1</sup> 248 NLRB 808 (1980), *enfd*, 702 F.2d 168 (9th Cir. 1981), *cert. denied*, 459 U.S. 1193 (1983).

<sup>2</sup> *Id.* at 815-16. See also Associated General Contractors of California, Inc., 280 NLRB 698, 701 n.9 (1986) (union did not contend that the construction industry proviso of Section 8(e) applied to owner-operator dump truck drivers who hauled dirt between two construction sites, some of which were controlled by the same contractor).

<sup>3</sup> 154 NLRB 67, 95-96 (1965), cited in Joint Council, 248 NLRB at 816 n.3.

<sup>4</sup> *Id.* See also Teamsters, Local 294 (Clemence D. Stanton d/b/a/ Rexford Sand and Gravel Co.), 195 NLRB 378, 381-82 (1972) (delivery of sand to jobsite held to be off-site work although some part of the delivery took place on the jobsite); Teamsters, Local 294 (Island Dock Lumber, Inc.), 145 NLRB 484, 491 (1963) (cement mixing on jobsite constituted the final act of delivery of the materials, which is not exempt from Section 8(e)), *enfd*, 342 F.2d 18 (2d Cir. 1965). These cases were cited by the Board in Joint Council, 248 NLRB at 815 nn.24, 27.

<sup>5</sup> 277 NLRB 1286, 1289-90 (1985).

<sup>6</sup> *Id.* at 1290. See also Operating Engineers, Local 12 (Stief Co. West), 314 NLRB 874, 877 (1994) (Section 8(e) proviso applicable to drivers whose "principal task" was to operate the boom truck on the jobsite, involving the hoisting, lowering, placement, and removal of steel forms integral to the construction of barrier walls).

<sup>7</sup> See also Teamsters Local 284 (Complete General Construction Co.), Case 9-CC-1581, Advice Memorandum dated December 23, 1996.